

718181  
**DECISION**



21594  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-206979

**DATE:** April 22, 1981

**MATTER OF:** Western Union Telegraph Company

**DIGEST:**

1. GAO review of termination for convenience actions is limited to instances where a decision to terminate is based on an agency determination that the initial contract award was improper.
2. Complaint that contracting agency modeled the process by which it decided to terminate the protester's contract on a competitive source selection between the protester's system and a possible alternative, without regard to laws and regulations that govern competition, is dismissed. The process used was not subject to the procurement statutes, but merely was used to decide whether continuation of the program served by protester's contract was in the best interests of the Government, a matter within the contracting agency's purview and not appropriate for review under GAO Bid Protest Procedures.
3. A protest against the proposed issuance of a solicitation and possible sole-source award to another firm is premature since it is speculative and merely anticipates an improper award.

Western Union Telegraph Company protests the termination of its contract No. DCA200-C-637 with the Defense Communications Agency (DCA) and the proposed issuance of a solicitation or solicitations to procure substitute communications systems equipment. We dismiss the protest.

Western Union complains that DCA's decision to terminate its contract is based on the results of a "clandestine

competition" conducted by DCA between Western Union's in-place communications system, known as Autodin II, and another technology known as ARPANET to be offered by Bolt, Beranek and Newman (BBN). According to Western Union, the "clandestine competition" was modeled after a competitive source selection and utilized two in-house design teams, one representing an adaptation of the existing Autodin II technology and one representing ARPANET. Western Union states that DCA contracted with it to assist the Autodin II team and with BBN to assist the ARPANET team.

Western Union asserts that each team was required to prepare a program plan for the communication system it represented. The program plans then were evaluated by an Evaluation Board in three major areas: technical, management, and cost. The Board recommended the ARPANET approach as the better alternative. Western Union states that this recommendation eventually resulted in a decision by the Deputy Secretary of Defense to terminate the Autodin II program and to replace it with a system based on ARPANET technology. Western Union essentially contends that the process by which this decision was reached, and which resulted in the termination of its contract, amounts to a competitive procurement conducted without regard to, and in contravention of, applicable laws and regulations.

As a general rule, our Office will not review an agency's determination to terminate a contract for the convenience of the Government, since by law this is a matter of contract administration for consideration by a contract appeals board and/or the Court of Claims rather than under our Bid Protest Procedures, 4 C.F.R. part 21 (1981). Jacobs & Son Painting and Decorating, B-204105, August 6, 1981, 81-2 CPD 103; Advanced Energy Control Systems, Inc., B-201249, May 20, 1981, 81-1 CPD 392. The only exception to this rule is when the contracting agency's action is based upon a determination that the terminated contract was improperly awarded; in that case, we will review the validity of the procedures leading to the award of the contract to the terminated contractor. Id.; New England Telephone and Telegraph Company, 59 Comp. Gen. 746, 752 (1980), 80-2 CPD 225. Since this exception does not apply here, we do not consider the propriety of DCA's decision to terminate Western Union's contract appropriate for our review.

With respect to Western Union's complaint that the process by which DCA's decision was reached amounted to an improper competitive procurement, we note that the firm admits that

it was an active participant, apparently without objection, in that very process and under the same ground rules that applied to BBN. In any case, it is clear from the protest that DCA did not conduct a procurement competition. Rather, it made an in-house comparison of the technical and cost aspects of two different technologies which it could use for its data communications system; in other words, although DCA modeled its alternative selection plan on competitive selection procedures, the selection plan was used only to determine whether continued development and reliance on the Auto II system was in the best interests of the Government. In our view, this was nothing more than a basic program decision which is not subject to the procurement statutes and therefore not appropriate for our review in a bid protest context.

Moreover, even if this matter were appropriate for our bid protest review, to the extent that Western Union regarded the alternative selection process as improper it should have protested this matter upon becoming aware of it. Our procedures require that protests such as this be filed within ten working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(b)(2). They do not afford a firm the opportunity to compete under allegedly improper procedures and then, if unsuccessful, protest the use of those procedures. See EG&G Incorporated, B-182566, April 10, 1975, 75-1 CPD 221.

Western Union also protests the proposed issuance of a solicitation to procure substitute equipment based on the ARPANET technology. The protester argues that this would be unduly restrictive of competition, unfairly favor BBN, and possibly result in one or more sole-source awards to BBN.

We consider this basis of protest to be premature, since no solicitation for substitute equipment has been issued by DCA. The proper time to raise such objections would be after issuance of such a solicitation since until that time its precise nature and provisions are only speculative. For us to consider the protest at this point, we would have to anticipate that the contracting agency will fail to comply with procurement regulations. This we will not do. Aero Corporation, B-194445.2, October 17, 1979, 79-2 CPD 262; Aero Corporation, B-194445, June 5, 1979, 79-1 CPD 394.

For the reasons set forth above, the protest is dismissed. We point out, however, that our audit staff is conducting its own review of DCA's decisions to terminate use of the Autodin II system and to consider an alternative system.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel